

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALAN CHRIS BERKEEMA,
JEFF MORGAN, PAT STOLTZ,
AND TODD FISCHER

MAILED

JUL 31 2007

PAT & TM. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Application No. 09/897,647

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on July 25, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

On April 11, 2006, appellants filed an Appeal Brief. On page 2, under the heading "Status of claims" the Appellants states that "Claims pending, finally rejected and appealed 1-5, 7-24, and 23-35 ..." In response, an Examiner's Answer was mailed on June 30, 2006. While the Answer notes that "The statement of the status claims

contained in the brief is correct" [page 2], the Examiner's Answer and the Final Rejection mailed October 4, 2005 failed to include claim 22 in the statement of the rejection. Correction is required.

In addition, On June 30, 2006, an Examiner's Answer was entered into the record. In the Evidence Relied Upon section, page 2, heading (8), the examiner relied on the following references:

| | | |
|----------------|------------|--------|
| Eldridge | EP 0893760 | 1-1999 |
| Srinivasan | 6,452,689 | 9-2002 |
| Hull | 6,772,338 | 8-2004 |
| Holtzman et al | 6,400,272 | 6-2002 |
| Gase | 6,184,996 | 2-2001 |
| Reece et al. | 5,915,214 | 6-1999 |

A review of the file reveals that reference Okkonen et al (US Patent No. 6,842,460) was used in the application of claim 20, as stated in the Grounds of Rejection, paragraph (9) of the examiner's answer. The Manual of Patent Examining Procedure, in § 1207.02 states:

(8) ***Evidence Relied Upon.*** A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

Before further review, the examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of all references mentioned in the statement of rejections. See the Manual of Patent Examining Procedure, (MPEP) § 1207.02. Appropriate correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) for a determination regarding the status of claim 22;
- 2) issue and mail a PTOL-90 having the missing references listed under the

Evidence Relied Upon section, heading (8) of the Examiner's Answer; and

- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:


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